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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,686	11/06/2003	John Preben Jensen	16014	8992

23389 7590 07/23/2007
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EXAMINER	
WONG, LESLIE A	

ART UNIT	PAPER NUMBER
1761	

MAIL DATE	DELIVERY MODE
07/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/702,686	JENSEN ET AL.	
	Examiner	Art Unit	
	Leslie Wong	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-53 and 55-64* is/are pending in the application.

4a) Of the above claim(s) *28-38, 61,and 62* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-27,39-53,55-60,63 and 64* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Applicant's election with traverse of Group I, claims1, 3-27, 39-53, 55-60, 63, and 64 in the reply filed on April 30, 2007 is acknowledged. The traversal is on the ground(s) that the claims are directed to a single inventive concept and that there is no burden. This is not found persuasive because Inventions I and II are related as process of making and product made. The inventions are distinct if **either or both** of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process and the process as claimed can be used to make another and materially different product..

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-27, 39-53, 55-60, 63, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kearney et al (US 5466294), Hyoky et al (WO 96/10650), or Yukio et al (US 6379735).

Kearney et al teach a process for separating sugar beet juice into different components using chromatographic techniques as is claimed (see entire patent, especially column 7, lines 59-66 and the Figure).

Hyoky et al teach a method for the fractionation of sucrose-containing solutions such as sugar beet using chromatographic techniques as is claimed (see entire document, especially Table 5).

Yukio et al teach the fractionation of molasses (from sugar beet) using chromatography to obtain flavor components as is claimed (see entire patent, especially column 4, lines 10-22 and column 5, line 64 to column 6, line 11).

The claims appear differ as to the recitation of flavor improver and the specific amounts claimed.

The prior art teaches the production of the same product using the same components. Flavor improvement would be no more than obvious to that of the prior art as the same components and process steps are used. In the absence of a showing to the contrary the amounts claimed would be no more than a matter of choice and well-within the skill of the art.

The amount of betaine is seen to be no more than obvious to that of the prior art as the same components and process steps are used. Furthermore, Kearney et al teach a betaine content of .92% (see Example 1) where it appears that the amount of betaine is readily adjustable.

Applicant's arguments filed April 30, 2007 have been fully considered but they are not persuasive.

Applicant argues that the prior art does not teach the use as a flavor improver or the amounts.

The prior art teaches the product produced from the fractionation of sugar beet juice. Flavor improvement would be no more than obvious to that of the prior art as the same components are used to obtain the same final product. In the absence of a showing to the contrary, the amounts claimed would be no more than that obviously obtained and well-within the skill of the art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Leslie Wong
Primary Examiner
Art Unit 1761

LAW
July 19, 2007